

**THIRD REPORT**

**OF THE COMMISSIONERS**

APPOINTED UNDER THE RESOLUTIONS OF MARCH 23, 1830,

RELATIVE TO A

**REVISED CODE OF PENNSYLVANIA,**

BEING THE

REVISION OF THE STATUTES RELATIVE TO

**COUNTIES AND TOWNSHIPS**

AND

**County and Township Officers,**

TO

**WEIGHTS AND MEASURES**

AND

**ADMEASUREMENT.**

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Read in the House, of Representatives, January 4, 1832.

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**HARRISBURG:**

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1833.



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## **REPORT, &c.**

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PHILADELPHIA, DECEMBER 31st, 1832.

SIR—We have now the honor to transmit to your Excellency our third report, containing two bills on subjects of general importance, and which are supposed to require the early attention of the Legislature, viz:

“A bill relating to Counties and Townships, and County and Township officers.”

“A bill relating to Weights and Measures, and to Admeasurement.”

We expect, in the course of a few weeks, to transmit a fourth report with as many bills as we suppose the Legislature will be disposed to act upon at their present session.

We remain very respectfully,

Your obedient servants,

W. RAWLE,  
T. I. WHARTON,  
JOEL JONES.

To His Excellency Gov. WOLF, &c.

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## **R e m a r k s**

On the bill entitled “A bill relating to Counties and Townships, and County and Township Officers.”

The bill now submitted to the Legislature, entitled “An act relating to counties and townships, and to county and township officers,” comprises a subject which, perhaps more than any other part of our municipal law, requires the revision and amendment contemplated by the resolutions from which our authority has been derived. In the course of the examination, which it has been our duty to make, of the existing law, we have found upwards of one hundred acts of Assembly, bearing upon the subject, all of them necessary to an adequate knowledge of our internal arrangements, many of them obscure in meaning, some contradictory in their enactments, and some, of which great doubts may exist whether they are operative as laws, or have

been repealed by disuse or implication. The provisions of this bill, except such as are new, have been derived from seventy-three acts of Assembly, scattered over the different volumes of our code, and not easily collected even by a diligent enquirer.

It has been our endeavor to digest them into a moderate compass, to arrange them in convenient order, and to add such new provisions as seemed to be called for by the enlarged population and increased intercourse of the state, or to be necessary for the harmonious working of the system. The existing division of the commonwealth into counties and townships, which in its principal features was copied from England, and prevails with little variation throughout the United States, appears to us well calculated, upon the whole, for the public good. In the government of these divisions, however, there is not the same uniformity, throughout the Union, nor, indeed, throughout this commonwealth. Certain provisions have been made for particular counties and townships, which do not apply to all, though they appear to us to be generally beneficial in their character. We think it desirable, that the main features of municipal arrangement should be the same throughout the state. We think it also desirable, that townships should be assimilated to counties, in respect to the mode of government, for the sake of regularity in the system, and because we believe that the present system of county government is, upon the whole, the best that can be adopted for the purpose. It may be proper here to remark, that we intend by county officers, those only who are elected by the people of the several counties, for county purposes. Prothonotaries, Registers, Recorders, &c. being appointed by the Executive of the commonwealth, appear to us to be properly state officers, although acting in and for the several counties; and have, certainly, no immediate connexion with the county organization: They are not, therefore, embraced in the present bill, but will be arranged under a different head.

In the accompanying remarks upon the several sections, will be found such further explanation as may be material to a correct understanding of the bill.

Section 1. In this section, we have enumerated the several counties in the state, in the order in which they were established by the successive acts of assembly, beginning with the year 1682, the foundation of the commonwealth, and ending with the act of 2d March, 1831, for the erection of the county of Juniata.

Section 2. In the existing laws, relating to county rates and levies, and in various other acts, the city of Philadelphia is frequently mentioned in connexion with the several counties in the state. We presume that it was not necessary to provide in express terms, that a general regulation for all the counties should embrace the city of Philadelphia, because we suppose that, except for certain corporate or internal purposes, every city forms an integral part of the county in which it is situate.



Still, as we find the practice to have prevailed of naming the city of Philadelphia, we have been apprehensive of creating doubts, by an omission of it in this and other bills; and to avoid the necessity of repetition, we have introduced the present section, which, therefore, merely generalizes what already exists in particular provisions.

Section 3. The three and four following sections, suggest some provisions which are new to our statute law, as positive regulations, but which appear to us to be necessary to remove doubts and difficulties which have occurred in relation to the corporate character of counties and townships. It has been several times intimated from the bench, that legislation was necessary on this subject. It is well known, that counties and townships, as such, have frequent occasion to enter into contracts, and to take and hold property; and it is plain, that without some of the capacities and powers of a corporation, great inconveniences must be experienced by them in the transaction of public business. Hence, in some of the states of this Union, we find that counties and townships are treated by the judges as *quasi* corporations; that is, possessed of corporate powers for a few specified purposes only. We are not aware that any opinion has been expressed by our own courts on this subject; and whatever may be the views of professional persons in relation to it, we think that it is expedient for the Legislature to settle the question definitively. By our system, the commissioners of a county are the organs and agents of the people of the county, in the transaction of their business. Whether they constitute a corporation, remains unsettled as a general question. In a very recent case in the Supreme court, (*Vankirk v. Clark*, 16 *Sergeant & Rawle*, 286) it was said by Judge Duncan to be a question of nice discussion, meriting attention and consideration. In two recent acts, one relating to the county of Lancaster, the other to the county of Allegheny, the Legislature have expressly declared the commissioners to possess corporate powers, so far as relates to those counties only. We think the remedy ought to be as general as the inconvenience, and we propose to attain it by a course in accordance with the system adopted in some of the sister states, and already alluded to. We think that it will be found advantageous to declare every county and township a body corporate for certain purposes, and with certain express powers adequate for all necessary purposes, but limited in extent. This is the object of the third section. In the fourth, we have provided that the corporate powers of the several counties and townships shall be exercised by the commissioners or supervisors thereof respectively; who, by the fifth section, are to conduct and defend all suits to which the county or township is party. In the sixth and seventh sections, we have provided the means of giving effect to judgments against counties or townships. In the present state of the law, considerable difficulty exists in this respect. The mechanic or

tradesman who deals with the commissioners or supervisors, in their official character, has no ascertained remedy at present to obtain payment of his demand, but the tedious and expensive course of an application to the Supreme court, for a mandamus; which, if obtained, may be, from various causes, altogether unavailing. This is an evil with which we think our land ought not to be any longer reproached. We would not, however, subject the property of a county or township to execution upon a judgment, because great public inconvenience might be the result. We propose, instead of this, to give power to the court in which judgment may be obtained, to issue a writ requiring the commissioners or supervisors, as the case may be, to cause the debt to be satisfied out of any unappropriated monies, or out of the first that may be received, and to enforce obedience to the writ by attachment. In suits before justices of the peace, the plaintiff may have the same remedy, by filing a transcript of his judgment in the proper court. We think that these provisions will have the advantage of, at least, greater expedition than at present exists, without increasing the liabilities of counties or townships, except in cases of demands ascertained to be just.

In thus conferring upon counties and townships certain corporate powers, we think that the Legislature will not incur any risk of the inconveniences or dangers for the public which are supposed to be incident, in many cases, to corporations. The powers thus granted are limited in number and extent. They can be exercised only by persons elected by the people, and renewed in rotation every year, and who are liable to various checks and control. Necessity, as we have intimated, has led the courts of justice in other states to assume that counties and townships possess, by their nature, certain corporate faculties; but we think it safer, and more consonant with the theory of our government, for the Legislature to grant such powers as may be necessary and proper; taking care, at the same time, to impose such restraints as may prevent their abuse.

Section 8. In this section we have adopted the provision of the act of 1705, (1 Smith L. 49) which declares that "there shall be a county seal for each county of the province;" and we have provided in addition, that the seal shall be in the custody of the commissioners of the respective county, and that their proceedings shall be authenticated by it.

Section 9, Provides that the title to the court-houses and other county buildings shall be taken, to be vested in the respective counties, for the use of the people thereof. There exists in the present laws a singular diversity upon this subject. By an act passed on the 28th of February, 1780, (1 Sm. L. 485) the jail, prisons, work houses, and lots of ground on which they stand, in the counties then existing, were vested in the commonwealth. Those counties were eleven in number. In certain other counties, the public buildings are vested in trustees, for the use of

the county. In others, the title is in the commissioners and their successors in office. The acts upon this subject, which we have had occasion to consult, are forty in number; few of them being similar in their terms. It appears to us that the provisions in this respect should be uniform throughout the state, and sufficiently explicit to remove all doubt with relation to the legal estate in this property, and to the duty of taking charge of it. The character of counties, as bodies corporate, being established by this bill, if the Legislature shall adopt our suggestions, there will be no necessity for the intervention of trustees, and the management of the property is the subject of the two following sections :

Sections 10 & 11. The powers and duties of the commissioners, in this respect, do not appear to us to be sufficiently defined at present. One of our earliest acts declared that there should be a "work house" "in each respective county of the province," (act of 1705, 1 Sm. 56.) By the act of 1724, §4, (1 Dallas Ed. 212) the commissioners of each county were authorised to raise money "to defray the charges of building and repairing of court houses, prisons, work-houses, bridges," &c. In the case of the commissioners of Allegheny county *vs.* Lecky, (6 Serg't & Rawle, 166) it was made a question whether this provision was still in force, but the court did not decide it. The act of 27th March, 1790, (2 Sm. 520) authorises the commissioners to erect suitable buildings in every county for the safe keeping and preservation of the public records; and the act of 4th April, 1807, (4 Sm. 394) requires them to erect such additional buildings as may be necessary, for the purposes of a county jail. The duty of repairing and keeping in order the public buildings is, we believe, generally understood to belong to the commissioners. The provisions now suggested, are intended to confer upon them the power of erecting such buildings as are necessary for the business of the county, and of adding to them from time to time, as occasion may require. To prevent, however, any needless or extravagant expenditure, the previous sanction of the court of Quarter Sessions and of the grand jury is required. It is also made the duty of the commissioners, to maintain the public buildings in sufficient order and repair.

Section 12. The 12th section makes it the duty of the officers therein mentioned, to keep their offices and public papers in the public buildings at the seat of justice of the respective counties. The constitution of this state, (Art. 5, Sec. 3) requires certain of those officers to keep their offices at the county town; and the act of 1790, (2 Sm. 520) makes it their duty to keep their offices and papers in the public buildings of the county. Considering the reasons for these acts to apply equally to all the county officers, we have extended the provisions to



commissioners, auditors, treasurer and sheriff, and altered the penalty from two hundred pounds to five hundred dollars.

Sections 13 & 14, Relate to the erection of new townships, and the alteration of the lines of old townships, and are taken, with slight verbal alterations, from the act of 24th March, 1803, (4 Sm. 30.)

The next title of the bill relates to county officers, who are thus arranged:

1. County commissioners.
2. County treasurer.
3. County auditors.
4. Sheriff and coroner.

Under these heads, we have collected and arranged the existing provisions of the law, relative to the election or appointment, qualifications, tenure of office, compensation, and general duties of these officers, and have added some new regulations, which will be the subject of remark in their order. The particular duties of county commissioners and othes, in relation to county rates and levies, elections, education, &c. will be arranged under the proper titles in future bills.

Section 15, Is derived, with no material alteration, from the 2d section of the act of 11th April, 1799, (3 Sm. 393.)

Section 16, Is derived from the same section. We have added to the cases mentioned in that section, two others, viz: the failure to elect and the removal of the commissioners from office. We have also, in this and other parts of the act, substituted the court of Quarter Sessions for the Common Pleas, as the proper tribunal for the appointment of county officers and for other proceeding in relation to them. The judges are the same in both courts, but the Quarter Sessions appears to us better fitted in its character for the transaction of municipal business, than the Common Pleas, which is mainly concerned in the settlement of private rights.

Section 17. In this section we have followed the 3d section of the act of 1799, providing for an official oath or affirmation to be taken by the commissioners. In this and other cases in the bill, we have altered the oath so as to make it conform to that required by the constitution of the United States, and of this State.

Section 18, Corresponds with the 7th section of the act of 1799, with an addition requiring the commissioners to assemble at the seat of justice of the proper county.

Section 19, Is nearly the same as the 15th section of the act of 1799.

Section 20, Is derived from the 11th section of the act of 1799.

Section 21, Is copied from the 26th section of the act of 1799, with an addition, requiring the proceedings to be certified by the clerk.



Sections 22 & 23, Are copied from the 27th section of the act of 1799, with slight verbal alterations.

Section 24, Contains the provisions of the 27th and 23d sections of the act of 1799, somewhat enlarged.

Section 25, Is derived from the 2d section of the act of 23d March, 1811, (5 Sm. 219.)

Section 26, Is copied from the act of 18th June, 1821, §6, (7 Smith, 345,) with the exception of the provision respecting the county of Philadelphia, which, with other local provisions, not coming within the sphere of our duties, are left by a general section, upon the footing on which they now stand.

## 2. COUNTY TREASURER.

Section 27, Is derived from the 13th section of the act of 1799, and from the act of 12th April, 1825, (P. L. 247.)

Section 28. The first part of this section is derived from the 13th section of the act of 1799. The provision excluding commissioners and auditors, which by the acts of 29th March, 1819, (7 Sm 233) and 2d April, 1821, (Id. 463) extended only to the counties of Philadelphia and Bucks, is here made general. We think that the reason for the exclusion applies to all parts of the state. The last clause of this section is taken from the act of 12th April, 1825, which we have extended to all accounts of the county treasurer with the commonwealth.

Section 29, Is copied from the 1st section of the act of 28th March, 1803, (4 Sm. 35 )

Section 30. This section is copied from the act of 12th April, 1825, (P. L. 248) with an alteration which extends the provision to all cases, in which a person may be disqualified by law from receiving the appointment of county treasurer.

Section 31, Is derived from the 23d section of the act of 30th March, 1811, (5 Sm. 228) with an alteration, transferring the duty of forwarding the certificate from the recorder to the commissioner.

Section 32, Is derived from the same section of the act of 1811. We have added a clause forbidding the treasurer to act until he shall have given bond, with surety, as afterwards provided.

Section 31, Is copied from the 13th section of the act of 1799.

Section 34. In this section we have required the county treasurer to give a separate bond to the commonwealth to secure the monies that may come into his hands on behalf of the state. We have here consolidated the provisions of the acts of 15th April, 1828, (P. L. 491) and 25th March, 1831, (P. L. 208, 210) and extended them to all cases in which that officer may be the agent of the commonwealth.

Section 35, Is derived from the act of 15th April, 1828.

Section 36, Is copied from the 10th section of the act of 1831.

Section 37, Is copied from the 14th section of the act of 1799.

Section 38. In this, and the two following sections, we have endeavored to methodize the duties of county treasurers, in their relation with the commonwealth, and to subject them to more effectual control or supervision. The act of 4th March, 1824, (P. L. 34) requires them to keep separate accounts of all monies received, for licenses to retailers of foreign merchandize. In the 38th section, we have extended the provision to every case in which money may be received by them on behalf of the commonwealth, and directed separate accounts to be kept in each case; which we think will be serviceable as a check upon the officer, and as a source of information to the Legislature and the public. In the 39th section are contained certain provisions, regulating the manner of rendering accounts to the Auditor General, which are at present contained in eleven acts of Assembly, viz:

Act of 30th March, 1811,	5 Sm. L. 223
2d April, 1821,	7 Sm. L. 473
2d April, 1822,	Id. 647
4th March, 1824,	Pamph. L. 34
12th April, 1825,	" 247
7th April, 1826,	" 228, 230
2d April, 1830,	" 147
" " "	" 160
7th April, 1830,	" 387
25th March, 1831,	" 206
" " "	" 209

By these acts, it is made the duty of each county treasurer to report annually to the Auditor General. We have added a provision, requiring him to report at such other times as the Auditor General may require. In the 40th section, we have directed the county treasurer to pay over to the state treasurer quarterly, instead of annually, as the law now stands. Whatever may have been the propriety of annual payments, at a period when county treasurers were accountable only for the small sums payable by tavern-keepers and hawkers and pedlars, it appears to us that more frequent settlements are necessary at the present time, when their responsibility to the commonwealth is so largely increased.

Section 41, Is copied from the 14th section of the act of 1799.

Section 42. In the 42d section we have endeavored to place the compensation of county treasurers, as agents of the commonwealth, on an equitable basis. The acts of 1811, 1821, 1830 and 1831, already cited, allow him a per centage on monies received and paid over for the commonwealth, varying in some respects, according to the source from which they are derived. We think that the compensation should be regulated by the amount paid over, and neither be below the proper remuneration for the labor and responsibility of the office, nor out of proportion with the general standard of emolument of public offi-

cers in this state. The rate which we have suggested in this section has been adopted in conformity with these views, and appears to us, on the whole, calculated to furnish an adequate compensation to county treasurers in all parts of the state.

Section 43, Is copied from the 23d section of the act of 1799.

Section 44. This section is copied from the 1st section of the act of 21st March, 1806, (4 Sm. 324) with a verbal alteration, which is intended to remove any doubts relative to the object of the legislature in forbidding commissioners and treasurers from engaging in the construction of public works. We have also added a provision that a commissioner or treasurer, after conviction of the offence stated, shall be adjudged to be removed from office, because it appears to us that the public dignity and the interests of the county require that under such circumstances he should not be allowed to retain the situation.

### 3. COUNTY AUDITORS.

Sections 45 & 46. Are derived, with slight alterations, from the act of 7th February, 1814, (6 Sm. 103.)

Section 47. Is derived from the 8th section of the act of 1791, (3 Sm. 15) with the alteration in the oath already adverted to, and with an addition requiring the oath or affirmation to be filed in the office of the clerk of the Quarter Sessions, in like manner as is now required in the case of the commissioners. It appears to us that uniformity is desirable on this and other points.

Section 48, Is copied from the 2d section of the act of 16th March, 1809, (5 Sm. 19) with slight variations.

Section 49, Is copied from the 1st, 2d, and 5th sections of the act of 1791, and the 2d section of the act of 20th March, 1810, (5 Sm. 161.)

Section 50. This section, which is new in terms, declares the duty of auditors in respect to the accounts of commissioners, treasurers, and sheriffs, with the state treasury. The subject of the relations of county officers with the executive of the state, to which we have already briefly adverted, is an important one, little understood, and requiring, we think, the early attention of the legislature. For some considerable period after the revolution, taxes appear to have been levied in the several counties for the use of the state, and through the agency of the county officers. The 7th section of the act of 1791 requires the auditors to transmit to the Comptroller General duplicates of all assessments made for state taxes, and to the State Treasurer a transcript of so much of their settlement as contains the account of monies levied for state purposes within the county; state taxes having been repealed, no other monies were collected in the counties for state purposes, than those which were derived from licenses to hawkers and pedlars, and tavern keepers, and from fines and forfeited recognizances. Until within a few years therefore, the state had but a limited interest in the just settlement of the accounts of the county officers. Since the acts le-

veying a duty on retailers of foreign merchandize, on collateral inheritances, and on real and personal property, a material change has taken place in the responsibility of county officers, requiring a corresponding supervision on the part of the state. It has become material that a system of examination and control should be established, which may prevent abuses on the part of county officers. By the act of 1811, the Auditor General is invested with large powers to compel settlements; but, at a distance from the county seats, his means of investigation must, after all, be limited. We propose in this bill to give him the aid of the county auditors in the settlement of all accounts between the state and its agents in the different counties; by making it the duty of the latter to settle their accounts in the same manner as if they were the accounts of the officers with the county. In the case of commissioners, treasurers, and sheriffs, this duty is required to be performed by them, without special directions; and we propose besides, to give the Auditor General power to refer to them the settlement of the accounts of prothonotaries, registers, recorders, &c. if he shall deem it necessary or expedient. It is not intended to take from him any supervisory power, but merely to render the auditors auxiliary to him, and we think they will be found useful in the investigation of these accounts. It will be seen from the succeeding sections that their report is to be filed in the Common Pleas; to which tribunal, an appeal may be taken by the commonwealth, the county or the officer. We trust that these provisions with those which we have introduced into the title of county treasurer, with the view of protecting the financial interests of the commonwealth, will be acceptable to the legislature.

We desire to add, that in the preceding remarks it is not intended to suggest that any instance has occurred of delinquency on the part of any county officer, in respect to the monies of the commonwealth. We are not aware of any such case, and have been governed in our suggestions only by the general and well established principles of our system.

Section 51, Is copied from the 2d section of the act of 1791, with an addition giving auditors the like powers to obtain the attendance of witnesses, as are possessed by the courts of Common Pleas. In the 10th section of the act of 1791, the auditors are referred to the Common Pleas for the necessary process to obtain the attendance of witnesses residing in another county. It has appeared to us, that the auditors ought to possess this power, which it is believed they are not likely to abuse, and that the want of it may produce great inconvenience if the court should not happen to be in session. For similar reasons, we have, in the 52d and 53d sections, authorised the auditors to administer oaths and affirmations, and to commit to the county prison in case of refusal to answer.



Section 54, Is copied from the 8th section of the act of 1791.

Section 55, Is derived from the 4th section of the act of 1791.

Section 56, Is derived from the 5th section of the act of 1791.

Sections 57 & 58, Are derived from the 5th section of the act of 1791. We have altered the original provision, so as to give the right of appeal to the commonwealth and the county, as well as to the officer. In the case of "The Commissioners of Mifflin county v. Brisbin," (2 Penn. Reports, 430) the Supreme court was compelled, by the terms of the act of 1791, to decide that there was no right of appeal by the county; we think that each party should have the right. In the 58th section, we have extended the time for appealing, in the case of the commonwealth, to four months; which we think is called for by the distance of the seat of government from some of the counties.

Section 59, Is copied from the 6th section of the act of 1791.

Section 60, Is intended as a substitute for the 7th section of the act of 1791, to which we have already adverted, and has been introduced for the purpose of giving the Auditor General notice of the settlement of the accounts.

Section 61, Is copied from the 6th section of the act of 18th January, 1821, (7 Sm. 345) omitting, for reasons already stated, the provisions relating to the county of Philadelphia.

Section 62, Is copied from the 8th section of the act of 1791.

#### 4. SHERIFF AND CORONER.

Section 63, Is derived from the act of 28th March, 1803, §1, (4 Sm. 45.)

Section 64. The act of 1803 specifies the amount of security to be given by the sheriffs of the several counties therein enumerated, 28 in number. In one of them, viz. Huntingdon, the amount of security has been increased by an act passed on the 30th of March, 1822, (7 Sm. 522.) Since the act of 1803, 23 counties have been organized, and provisions have been made by law for the security of their respective sheriffs. In some of the acts passed for this purpose, there appears to be a great want of precision and certainty. Thus, the act of 2d April, 1803, provides that the sheriffs of Beaver, Butler, Mercer and Erie shall respectively give the same security as the sheriffs of Allegheny and Crawford. Now, by the act of 28th March, 1803, the security to be given by the sheriff of Allegheny is \$10,000, and that of the sheriff of Crawford is \$5000; it is difficult, therefore, to ascertain upon what basis the amount of security in the four counties above mentioned is taken. Again, by the several acts for organizing M'Kean, Tioga, Bradford and Susquehanna counties, it is declared, that the security of their respective sheriffs shall be taken "in the like sums," "as in the other organized counties of the commonwealth." As the amount of security, however, varies in the several counties, from \$60,000 in Philadelphia to \$5000 in Crawford and other

counties, similar difficulties, we suppose, must exist in ascertaining the proper standard in M'Kean and the three other counties mentioned. In relation to the 28 counties enumerated in the act of 1803, we have followed that act in the amount of security, with the exception of Huntingdon; not because we supposed the amount to be adequate in every instance for the present day, but for want of sufficient information to enable us to arrive at a better standard. Since that act, the population of the state has doubled itself, and the increase in wealth and business has, in all probability, been equally great. Some increase in the amount of the security of sheriffs seems therefore expedient; but we have thought it best, upon the whole, to report the bill with the present sums, leaving it to the Legislature to make such alteration as the interests of the several counties may seem, to their representatives, to require. The same remark may be made of those counties which have been organized since the act of 1803. We have followed the several acts where the sum was ascertained. In the cases alluded to, where the sum remains uncertain, we have taken the amount which we supposed to be nearest to the intention of the Legislature.

Section 65, Is copied from the 3d section of the act of 1803, with a slight verbal alteration.

Section 66, Is copied from the same section, with the omission of the words "after he shall have been duly commissioned sheriff," &c. which are not in the recognizance, and appear to us an unnecessary restriction, and calculated to interfere with the provisions of a succeeding section.

Sections 67 to 70. These sections are derived from the 1st, 7th, 2d and 3d sections of the act of 1803, with some slight verbal alterations, not affecting the substance of the original provisions.

Section 71, Is new to our code. The first clause of this proviso exists, however, in the laws of Ohio, and probably in those of other states, and appears to us to be worthy of incorporation with our system. The importance of the office of sheriff to the community, is shown by the amount of security which he is required to give; and it is material that those who are called upon to exercise a degree of supervision or control over sheriffs, or who are otherwise concerned in the administration of justice, should not be allowed to connect themselves with the officer, in the way of suretyship at least, so as to disturb or even throw doubts upon their impartiality, or to create embarrassing relations of business with him. The last clause is intended as an additional means of obtaining sufficient security for the public against misconduct in either sheriff or coroner.

Section 72. This section is similar in substance with the 2d section of the act of 1803.

Sections 73 & 74. The 73d and 74th sections contain some new provisions. We consider it important for the public, that the

commission of the sheriff shall be placed on record in some convenient place, to which the people may have easy access; and that every possible check should be imposed upon the exercise of the office, before a commission shall have been received and recorded. It will be seen by a subsequent section, (S. 75) we have provided that the recorder of deeds shall certify the recognizance to the prothonotary of the Common Pleas, in order that it may be entered on the judgment docket. It may happen, however, that a commission may not be granted, although the recognizance has been given and approved by the judges, because the Governor is still to judge of the sufficiency of the sureties. In such case, there would be at least a nominal lien on the property of the parties, which it would not be easy to discharge. By providing, however, that the sheriff shall cause his commission to be recorded, and that, after the receipt of the commission, the recorder shall certify the recognizance to the Common Pleas, the occurrence of this difficulty will be prevented.

In the 74th section, we have introduced a provision varying materially from the act of 1803, the 5th section of which provides that "until sureties shall be given in manner aforesaid, all commissions granted to, and all acts and things whatsoever done by any such sheriff or coroner, under color of office, shall be void and of none effect." The object of this section of the act of 1803, is to prevent sheriffs elect and others from undertaking any act, as such, before giving security; and so far it is undoubtedly right; but it is so worded as to produce inconveniences to the public, which were not anticipated. In the case of *Young vs. the Commonwealth*, (6 Binn. 88) it was decided by the Supreme Court, upon the construction of this section, that the sureties of a coroner were not liable on his official bond for his misconduct in office, in a case in which a recognizance had not been given. Chief justice Tilghman, after citing the 5th section of the act of 1803, said—"This bond, by the express terms of the condition, is to have no effect until Samuel Young shall be duly commissioned coroner, &c. But a void commission is no commission; therefore, by the positive provision of the law, there can be no recovery on the bond, unless accompanied with a recognizance. This may be attended with excessive hardship when the officers of the commonwealth have been so inattentive as not to see that the law has been complied with, before the commission issues, or, at least, before any process is put into the hands of the sheriff or coroner: and it may be doubted whether the Legislature, in their anxiety to enforce security, may not have gone further than was necessary. The subject is well worthy of their consideration; for, as the law stands, both individuals and the public may be subject to great injury, from the hardihood of a sheriff or coroner, who presumes to act without having given the requisite security." To prevent the



recurrence of similar difficulties, we have struck from the condition of the bond, the words which limit the liability of the sureties to acts done after a commission granted; and we propose, in this section, to inflict a penalty upon any sheriff or coroner elect, who shall undertake any of the duties of the office, before a commission shall be granted to him; reserving, however, the liability of the sureties, for all acts done by color of office.

Section 75, Is derived from the 4th section of the act of 1803, with the addition of a few words, which limit the lien of the recognizance to the county in which it was given. The words of the act of 1803 are broad enough to extend the lien to all the real estate of the parties throughout the commonwealth. We doubt whether this was the intention of the legislature, and we think it has not been so considered in practice. Certainly it has been the object of all other acts regulating liens, to carry notice with them, which cannot be effected in this instance. Under the present law, we suppose that real estate lying in the county, is only or chiefly considered in determining the competency of a surety. We propose therefore to limit the lien to the county; and in order to give more effectual notice we require that the recognizance shall be certified to the prothonotary of the Common Pleas, in whose office it is to have the effect of a judgment.

Section 76, Is copied from the 7th section of the act of 1803.

Section 77, Is derived from the 6th section of the act of 1803. We have altered the last clause, however, so as to authorize the judges of the Common Pleas to determine the amount in which security shall be given. It appears to us that the length of time for which the commission is to be granted, will not always be found a just measure of the security, and that the court of the county will generally have the best means of determining the question.

Section 78, Is derived from the 6th section of the act of 1783 (2 Sm. 85.) and the 26th section of the act of 1811 (5 Sm. 234.) with some alterations, in which we have extended the duty, so as to embrace all monies received for the use of the commonwealth, and to require an account thereof whenever the Auditor General shall exact it.

Section 79. This section is new. Considerable inconvenience at present exists for want of some provision respecting the books of sheriffs after the expiration of their office. Many entries of great importance or interest to suitors are contained in these books, which, after they leave office, are generally carried with them to their respective places of residence, and difficulties are frequently experienced in obtaining access to them. Some consideration, we think also, is due to the sheriff's sureties, who by the loss or concealment of his books may be disabled from proving facts of material importance to them.



This section is suggested with the hope that it will be effectual to remove an inconvenience generally experienced.

Sections 80 & 81, Are derived from the 9th and 10th sections of the act of 1803.

### 3. OF TOWNSHIP OFFICERS.

The remaining sections of the bill relate to township officers. It has been our object, as we have already mentioned, to assimilate townships in their structure and organization to counties; the principal materials for which already exist in certain local provisions which have from time to time been enacted by the legislature, and which we have merely generalized. The cases of township auditors and town clerk furnish an example of this. Both were originally established in certain districts only, but as experience showed their utility, they have, by successive acts, been extended over the principal part of the state. It will be seen that the choice of township officers is not made imperative upon the people. It has appeared to us best, to leave it to the judgment of the inhabitants of the several townships to determine whether they will elect these officers or dispense with them. In some townships most of them are already sufficiently familiar and well approved. In others it may be the work of time to make their benefits obvious, but we think that all will sooner or later fall into the adoption of the system if it shall receive the sanction of the legislature.

Section 82. In this section we have enumerated and classed all the township officers already existing, or which we think it for the public interest to provide. In the term of office, we have followed the existing provisions.

Sections 83 to 87. In these sections we have generalised certain provisions of the present law, which appeared to us susceptible of being brought into a common rule. In the 84th section, we have thought it expedient to limit the power of appointment of treasurer and clerk, to cases in which at least thirty electors shall apply for the exercise of it. It may happen that the electors of a township may not think the particular office necessary or expedient; and in such case, we should not think it proper for the court to interfere. If occasion should exist in the opinion of thirty electors, we would make it lawful for the court to appoint, if they thought the interests of the township required it.

### 1. ASSESSORS.

Sections 88 & 89, Are derived from the 5th and 6th sections of the act of 11th April, 1799. (3 Sm. 393.)

Section 90. The first clause of this section makes general a provision, originally designed for the city and county of Philadelphia alone, (act of 2d April, 1822, §3, 7 Sm. 558,) but which we think ought to be of general application. The last clause is copied from the 22d section of the act of 1799.

## 2. SUPERVISORS.

Section 91. In this and other sections, we have denominated these officers, supervisors merely; omitting the words in the present laws which seem to limit their duties to the roads and highways of the township. It appears to us, that they may properly stand in the same general relation to townships, that commissioners do to counties; having the superintendence and charge of the affairs of the township generally, though especially entrusted with the care of roads and highways. We find another motive for an enlargement of the sphere and functions of these officers, in the consideration of a subject of great public interest and importance. We trust that the time is not far distant, when the education of children will become the business of every township in the state; and when school houses, with competent teachers, will be erected in convenient districts. The present system is generally conceded to be defective; but in no point does it appear to us more susceptible of amendment, than in that which devolves the charge of this subject upon county commissioners, who, from their limited number, the pressure of other duties or pursuits, and the great extent of counties in general, are incapable of giving to it that attention which we think its paramount importance deserves. The experience of other states demonstrates, that to render education accessible to all, it is necessary to establish school houses in small districts. It is not necessary, we think, to create any new offices for the purpose. The supervisors of a township, organised on the plan of this bill, will, we submit, be the proper and competent agents of the people in this and other general concerns of the township. We have not, however, in this bill, made any express reference to the subject of education, in connexion with the duties of supervisors. It appeared to us sufficient, in this place, to provide for the incorporation of townships, and for the enlargement of the functions of supervisors, leaving it to the Legislature hereafter, to make use of their agency in carrying into effect any system of education they may think proper to adopt.

We may add here, that we have not considered ourselves at liberty to dispense with the separate office of overseers of the poor, although we are not satisfied that any necessity exists for its continuance; we see no substantial reason why the office should not be united with that of supervisors. The system would be more simple, attended probably with less expense and fewer inconveniences, if supervisors were assimilated in all respects to commissioners of counties, and had the charge of education, of the poor, and other township matters, as well as roads and highways. Their number might then be increased to three, and their term of service enlarged to three years, as in the case of commissioners. Should the Legislature be disposed to con-



solidate the offices in the manner suggested, the change can be effected with very slight alteration in the present bill.

Section 93, Is derived from the 12th section of the act of 1802.

Section 94, Is derived from the 23d section of the same act.

### 3. OVERSEERS OF THE POOR.

Sections 95 & 96, Are derived from the 16th and 14th sections of the act of 9th March, 1771. (1 Sm. 332.)

### 4. TOWNSHIP TREASURER.

Section 97. In this and the three following sections, we have proposed the appointment of an officer similar in character and functions to the county treasurer, for the fiscal business of the several townships. The present scheme of township organization appears to us to be seriously defective, especially in regard to the management and control of the township funds. Whether the amount be great or small, we think that there ought to be a sufficient check upon the raising of money in the first instance, and afterwards upon its expenditure. Now, as the law stands, we find that the supervisors of the roads and the overseers of the poor possess, separately, the power of levying taxes for the purposes of their respective offices, the collection of those taxes, and the personal appropriation of the funds, without any other check or control than that which arises from the examination of their accounts by the freeholders chosen under the act of 1802, or by the township auditors in certain counties, under certain special acts already adverted to. By some other local provisions, supervisors are required to give security for the due appropriation of the monies that may come into their hands. To supply the defect and guard against probable abuses, we propose the appointment of a township treasurer, who shall receive and be accountable for all monies accruing for township purposes, and who shall give adequate security therefor. We think that economy and regularity in accounts will be promoted by the creation of this office. We propose that the officer shall be annually elected by the people, and shall give security to the satisfaction of the supervisors and overseers of the poor. In the details of his duties and liabilities, we have followed the provisions relating to county treasurers.

### 5. TOWN CLERK.

The act of 13th April, 1807, (4 Sm. 472) provided for the election of a town clerk in the counties of Philadelphia, Bucks, Chester, Lancaster, Northampton, Wayne and Delaware, and prescribed his duties. By the act of 20th March, 1810, the provision was extended to the counties of York and Montgomery. In 1813, (6 Sm. 59) it was extended to all the counties in the state, excepting Erie, Crawford, Warren, Mercer, Pot-

ter, Schuylkill, Butler, Adams, Allegheny and M'Kean; and by the act of 5th March, 1819, (7 Sm. 159) seven of these ten counties were included in the provision. There remain, therefore, only three counties to which the act of 1807 does not apply. It appears to us that the power to elect this, and other township officers, should be general and uniform. We have already remarked, that from the phraseology of these sections, it will be optional with the inhabitants of a township to elect these officers, or dispense with them.

Section 101, Provides that the town clerk shall, *ex-officio*, be clerk to the supervisors and overseers, and declares his duty in this respect. This provision is new, and has been suggested by the considerations already adverted to, respecting the present want of control over the proceedings of supervisors and overseers. The town clerk will record their proceedings and keep their accounts, and will thus furnish, it is believed, both a guide to them in respect to their duties, and a check upon irregularity or abuse.

Section 102, Is taken from the first section of the act of 1807, with some alterations, which adopt it to the system contemplated by the bill.

Section 103, Is taken from the 1st and 6th sections of the same act. We have altered the original provision so far as to authorise a fee of ten cents for a search in the books of the town clerk, conceiving that he ought not to be expected to give his services gratuitously, and that those who derive a benefit from his records should pay a reasonable compensation therefor.

## 6. TOWNSHIP AUDITORS.

Section 104, This, and the four following sections, merely generalize certain local enactments which we think have been found by experience to promote the public good. The first act passed on the subject, authorised the choice of township auditors in the counties of Northumberland, Centre, Venango, Beaver, Crawford, Mercer, Allegheny, Berks and Schuylkill, (Act of 14th January, 1830, P. L. 26.) Since that date they have, by successive acts, been extended to the counties of Susquehanna, Luzerne, Warren, Huntingdon, Tioga, Clearfield, Butler, Montgomery and Chester; and we now propose to authorize the citizens of every township in the state to elect auditors; and define the duties of the persons so elected. In section 107, we have assimilated their authority to that of county auditors, and in section 108 they are allowed similar compensation. We have directed, in section 105, that their report shall be filed with the town clerk, supposing that in his hands it would be more accessible to the people of the township, than if filed with the clerk of the Quarter Sessions. In section 106, an appeal is provided from their report, in the same manner as in the case of county auditors.



## 7. CONSTABLES.

The provisions under this head are mainly derived from the existing laws, so far as they respect the appointment of this officer and his security. Those which relate to his duties in the administration of justice, &c. will be found in a future bill.

Section 109, Is derived from the 6th section of the act of 1st March, 1799, (3 Sm. 356.)

Sections 110, 112 & 113, Are copied from the 29th section of the act of 20th March, 1810, (5 Sm. 173.)

Section 111, Is derived from the 29th section of the act of 1810, the 3d section of the act of 29th March, 1824, (P. L. 172) and the 4th section of the act of 1808, (4 Sm. 531.) with slight alterations. The proviso in the 29th section of the act of 1810, which declares that "no person shall be permitted to serve as constable more than three years in any term of six years," having, by various acts, been repealed with respect to many counties of the state, and perhaps by implication from the act of 28th March, 1820, not being operative in any part of the state, we have not introduced it into the present bill.

Section 114, Is derived from the 29th section of the act of 1810, with an alteration taken from the 3d section of the act of 1824.

Section 115, Is taken from the act of 26th March, 1820, with an alteration limiting the power of a special deputation to the case of a civil suit or proceeding; which we suppose was the intention of the act.

Section 116, Is taken from the act of 4th February, 1830, (P. L. 36.)

Section 117. In this section we have provided, by a general rule, for the mode of recovering pecuniary penalties imposed by the bill, and not otherwise provided for. It appears to us that in the case of public officers, the proceedings should generally be in the court of Quarter Sessions.

Section 118, The design of this section is to preserve the operation of a numerous class of local provisions contained in acts of Assembly. We have felt considerable embarrassment in deciding upon the proper course to be adopted in relation to these laws. To preserve them, will mar the uniformity of the law as actually administered, and may tend to lay the foundation of an irremediable diversity in the usages of the commonwealth.—On the other hand, were we to propose their repeal, it might be thought to be an undue enlargement of the scope of the resolutions under which we act. It might also interfere essentially with the wishes and convenience of the people of the cities and other districts to which they respectively apply. There may also be differences of situation with which we are not acquainted, requiring different Legislative provisions.

These considerations have prevailed with us to introduce this concluding section, and to leave the subject to those especially interested, to decide how far the general scheme proposed in this bill will be an advantageous substitute for these local acts. If the system proposed shall be found to work well, we suppose that, ultimately, local provisions inconsistent with it will be repealed by the Legislature.

In conclusion we would repeat, by way of guarding against misconception of the scheme of the present bill, that it is not intended to embrace the details of special duties, belonging to certain officers by common law, or assigned to them by acts of Assembly. Many subjects, which may at first sight appear to have been overlooked by us, have been duly considered, and appropriated to other titles, with which we conceive that they may be more conveniently incorporated. Thus, the duties of county commissioners and treasurers in relation to unseated lands, of sheriffs and constables in the execution of process in civil cases, of supervisors in respect to roads and highways, and of town clerks in regard to strays, and the like, will be the subject of bills, which we hope before long to submit to the Legislature.

# **A Bill**

## **Relating to Counties and Townships, and County and Township Officers.**

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## An Act

### Relating to Counties and Townships, and County and Township Officers.

*It is enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, as follows:*

Section 1. The state shall be divided into the following named counties, viz:

Philadelphia, Bucks, Chester, Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland, Westmoreland, Washington, Fayette, Franklin, Montgomery, Dauphin, Luzerne, Huntingdon, Allegheny, Mifflin, Delaware, Lycoming, Somerset, Greene, Wayne, Adams, Centre, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Indiana, Jefferson, M'Kean, Clearfield, Potter, Tioga, Cambria, Bradford, Susquehanna, Schuylkill, Lehigh, Lebanon, Columbia, Union, Pike, Perry, Juniata, as the same are now by law established: And into such others as the Legislature may, from time to time, establish.

Section 2. Every city shall be deemed and taken to form part of the county in which it is or may be situate; saving, nevertheless, to each city and to the citizens thereof, all and singular the jurisdictions, powers, rights, liberties, privileges and immunities, granted by the respective charters and by the laws of this commonwealth.

Section 3. The several counties and townships in this state shall have capacity as bodies corporate:

1. To sue and be sued as such.
2. To take and hold real estate within their respective limits, and also personal property: Provided, that such real and personal estate shall be taken and held, only for the benefit of the inhabitants of the respective county or township, and for such objects and purposes, and none other, as county or township rates and levies are now, or hereafter may be, authorised by law to be laid and collected; and for such other objects and purposes as may hereafter be expressly authorised by law.
3. To make such contracts as may be necessary and proper for the execution of the same objects and purposes.

Section 4. The corporate powers of the several counties and townships shall be exercised by the commissioners or supervisors thereof, respectively.

Section 5. All suits by a county or township shall be brought and conducted by the commissioners or supervisors thereof, respectively; and in all suits against a county or township, process shall be served upon, and defence made by, the commissioners or supervisors thereof, respectively.

Section 6. If judgment shall be obtained against a county in any action or proceeding, the party entitled to the benefit of such judgment may have execution thereof as follows, and not otherwise, viz. It shall be lawful for the court in which such judgment shall be obtained, or to which such judgment may be removed by transcript from a justice of the peace or alderman, to issue thereon a writ commanding the commissioners of the county to cause the amount thereof, with the interest and costs, to be paid to the party entitled to the benefit of such judgment, out of any monies unappropriated of such county; or if there be no such monies, out of the first monies that shall be received for the use of such county; and to enforce obedience to such writ by attachment.

Section 7. If judgment shall be obtained against a township, or against the overseers of the poor of a township, the like proceedings may be had to enforce payment out of the township funds, according to the circumstances of the case.

Section 8. There shall be a county seal for each county of this state, which shall be in the custody of the commissioners thereof, and the official acts of the commissioners shall be authenticated therewith.

Section 9. The title to all and singular the court houses, jails, prisons, and work houses, together with the lots of land thereunto belonging or appertaining, in the several counties in this state, as they now are, or heretofore have been, vested in any feoffees or trustees, or in the commonwealth, or in the commissioners of the respective counties, or in any bodies politic or corporate, for the several use of the said counties respectively, shall be, and they are hereby declared to be vested in the respective counties, for the use of the people thereof, and for no other use.

Section 10. It shall be lawful for the commissioners of any county, having first obtained the approbation of the grand jury and of the court of Quarter Sessions of such county, to cause to be erected at the seat of justice thereof, when occasion shall require, such building or buildings as may be necessary for the accommodation of the courts, and of the several officers in the county, and for the reception and safe keeping of the records and other papers in charge of such officers; and also such other building or buildings as may be necessary and proper for the

purposes of a county jail and work house, and if need be, to purchase ground for the erection of such buildings.

Section 11. It shall be the duty of the commissioners of every county, to keep and maintain the public buildings aforesaid of the county, in suitable and convenient order and repair; and it shall be lawful for them, when necessary, having first obtained the approbation of the grand jury and of the court of Quarter Sessions of the county, to alter, add to, or enlarge such public buildings.

Section 12. It shall be the duty of the several prothonotaries, clerks of the court of Quarter Sessions and Orphan's court, registers, and recorders, and also of the commissioners, auditors, treasurer, and sheriff of the several counties, to keep their respective offices, and all public records and papers belonging thereto, at the seat of justice of the respective county, and in such building or buildings as may be erected or appropriated for such purpose, under a penalty, in each case, of five hundred dollars, to be recovered by action of debt or information; one half thereof to be paid to the treasurer of the proper county, to be applied by him to the payment of the erection or repairs of such buildings, and the other half thereof to be for the use of him who shall first sue for the penalty.

Section 13. The several courts of Quarter Sessions shall have authority, within their respective counties, to erect new townships, to divide any township already erected, and to alter the lines of any two or more adjoining townships, so as to suit the convenience of the inhabitants thereof.

Section 14. Upon application by petition to a court of Quarter Sessions, for such purpose, the said court shall appoint three impartial men, if necessary, to inquire into the propriety of granting the prayer of the petition; and it shall be the duty of the commissioners so appointed, or of any two of them, to make a plot or draught of the township proposed to be divided, and the division line proposed to be made therein, or of the township proposed to be laid off, or of the lines proposed to be altered of two or more adjoining townships, as the case may be, if the same cannot be fully designated by natural lines or boundaries; all which they or any two of them shall report to the next court of Quarter Sessions, together with their opinion of the same; and at the term after that, at which the report shall be made, the court shall take such order thereupon as to them shall appear just and reasonable.

## II. OF COUNTY OFFICERS.

### 1. *County Commissioners.*

Section 15. The electors of every county shall, on the day of the general election, in each year, elect one respectable citizen, to serve as commissioner of the county, for the term of



three years, next ensuing such election, and until a successor shall be duly elected or appointed.

Section 16. If an election of a county commissioner shall not take place, as is herein before provided, or if such election shall be set aside according to law, or if any commissioner shall decline serving in such office, or shall die or remove out of the county, or be removed from office, the remaining commissioner or commissioners, together with the court of Quarter Sessions of the county, shall appoint a suitable citizen to fill the vacancy, until the next general election, when a commissioner shall be elected for the unexpired term.

Section 17. Every commissioner elected or appointed as aforesaid, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation, before some person having authority to administer oaths, to support the constitution of the United States and that of this state, and to perform the duties of his office with fidelity; which oath or affirmation, certified by the person before whom it was taken, shall, within ten days thereafter, be filed by such commissioner, in the office of the clerk of the court of Quarter Sessions of the same county.

Section 18. The commissioners of each county shall assemble at the seat of justice thereof, within thirty days after the general election, in each year, when each new commissioner shall produce a certificate, under the hand and seal of the clerk of the court of Quarter Sessions of the same county, of his election and qualification, according to the provisions of this act.

Section 19. Two of the commissioners aforesaid, shall form a board for the transaction of business; and, when convened in pursuance of notice, or according to adjournment, shall be competent to perform all and singular the duties appertaining to the office of county commissioners.

Section 20. It shall be the duty of the commissioners of each county, to appoint a suitable person as clerk, who shall keep the books and accounts of the board, record or file their proceedings and papers, attest all orders and warrants issued by them, and perform all other acts pertaining to his office as clerk: He shall receive for his services, such sum as the commissioners shall, at their first meeting in each year, agree upon.

Section 21. Copies of the proceedings of the commissioners, certified by their clerk under the county seal, shall be good evidence of such proceedings, on the trial of any cause, in any of the courts within this commonwealth.

Section 22. It shall be the duty of the commissioners of each county, to publish annually, once a week for four successive weeks, in the month of February, a full and accurate statement of all receipts and expenditures of the preceding year, in one or more of the newspapers printed in the county, and if no newspaper be published in such county, then in at least fifty printed hand-bills, to be set up in the most public places in the county.

Section 23. Such statement shall enumerate the respective sums paid by each ward and township within the city and county, and also designate all sums expended for the support of prisons, the pay of each commissioner and their clerk, the repair of old or the erection of new bridges, and the sums paid to individuals for lands over which roads may have been laid out, together with such other items as may have a tendency to convey general information of the transactions of the preceding year.

Section 24. If the commissioners of any county shall neglect or refuse to perform any duty required of them by law, or if any one of such commissioners shall neglect or refuse to perform any official duty, they or he shall respectively be fined in a sum not exceeding one hundred dollars.

Section 25. The commissioners of every county shall respectively have power to administer oaths and affirmations, in all cases arising in the performance of the duties of their office.

Section 26. The commissioners of each county shall respectively receive out of the county treasury, the sum of one dollar and fifty cents, for each day they shall necessarily attend to the duties of their office.

## 2. COUNTY TREASURER.

Section 27. The commissioners of each county shall, annually, in the first week in the month of January, appoint a respectable citizen as county treasurer; and, in the event of the death, removal from the county, or misbehaviour in office, of such treasurer, it shall be the duty of the commissioners to appoint a fit person to fill the vacancy, until the end of the year.

Section 28. Provided, that no judge, clerk, or prothonotary of any court, county commissioner, or auditor, shall receive the appointment of county treasurer; and that no person shall be appointed to such office, within three years after he shall have been a county commissioner or auditor. And provided also, that no county treasurer shall be capable of receiving a re-appointment, unless he produce to the commissioners a certificate from the Auditor General and State Treasurer, that his accounts with the commonwealth have been duly settled, and the monies belonging to the commonwealth paid over according to law; which certificate shall be filed in the office of such commissioners.

Section 29. No county treasurer shall serve in such office longer than three years in any term of six years.

Section 30. If the commissioners of any county shall appoint to the office of treasurer, any person who by law is declared to be incapable of receiving such appointment, they shall be deemed to be guilty of a misdemeanor in office; and each commissioner consenting to such appointment, shall be sentenced to pay a

fine of not less than fifty dollars, nor more than three hundred dollars, at the discretion of the court, for the use of the commonwealth.

Section 31. It shall be the duty of the commissioners of each county annually, within ten days after the appointment of county treasurer, to grant to such treasurer a certificate of his appointment, under the county seal, which shall be entered of record in the office of the recorder of deeds of the same county; and also to forward to the Auditor General, a certificate in similar form, stating the name of the county treasurer, and the date of his appointment.

Section 32. No person, appointed treasurer of any county, shall undertake any of the duties of his office, until a certificate of his appointment shall have been given and recorded, in conformity with this act, nor until he shall have given bond with sureties, as is herein after provided.

Section 33. Each county treasurer shall give bond with sureties, to the satisfaction of the commissioners, conditioned for the faithful performance of the duties of his office, for a just account of all monies that may come into his hands on behalf of the county, for the delivery to his successor in office of all books, papers, documents, and other things held in right of his office, and for the payment to him of any balance of money belonging to the county, remaining in his hands.

Section 34. Each county treasurer shall also, before entering upon the duties of his office, give a bond with sufficient security, to be approved of by at least two of the judges of the court of Quarter Sessions of the same county, and in such penalty as the said judges shall deem sufficient, conditioned for the faithful discharge of all duties enjoined upon him by law, in behalf of the commonwealth, and for the payment, according to law, of all monies received by him for the use of the commonwealth; which bond shall be taken by, and acknowledged before, the recorder of deeds of the same county, and recorded in his office, at the cost of the county treasury; and the original bond shall be forthwith transmitted to the Auditor General.

Section 35. Copies of the record of the official bond of any county treasurer, acknowledged and recorded as aforesaid, and duly certified by the recorder of deeds for the time being, shall be good evidence in any action brought against such treasurer or his sureties on such bond, according to its form and effect, in the same manner as the original would be, if produced and offered in evidence.

Section 36. If any county treasurer shall fail to transmit to the Auditor General, within one month after his appointment, the bond required by this act to be given by him for the use of the commonwealth, the Auditor General shall give notice thereof to the county commissioners, who shall forthwith proceed



to remove such treasurer from office, and appoint some suitable person in his place.

Section 37. It shall be the duty of every county treasurer to receive all monies due or accruing to the county, and to pay the same on warrants drawn by the commissioners; he shall keep a just and true account of all monies received and disbursed, which account shall be at all times open to the inspection of the commissioners, and of each of them; he shall once in three months, and oftener if required, furnish the commissioners with a statement of all monies received and disbursed since the date of his last statement, exhibiting the balance remaining in his hands, together with the names of the collectors in whose hands any arrearages of taxes may remain, with the amount thereof; and he shall once in each year, state his accounts and produce his vouchers, which, after examination by the commissioners, shall be by them laid before the county auditors for settlement, according to law.

Section 38. It shall be the duty of every county treasurer to keep separate accounts of all monies received by him, on behalf of the commonwealth, from the following sources, viz.

1. From licenses granted to hawkers and pedlars.
2. From licenses to tavern keepers.
3. From licenses to retailers of foreign merchandize; specifying, in each of these cases, the names of the parties, the rate or amount paid for such license, and the year for which such license was issued or the duty paid.
4. From exempt fines.
5. From duties on collateral inheritances; specifying the name of the decedent, and the amount or value of the estate.
6. From taxes assessed on personal property, in pursuance of any act of Assembly.
7. From taxes assessed on real estate, in pursuance of any act of Assembly.
8. Under the laws providing for the gradual collection of monies due to the commonwealth for lands.

Section 39. It shall be the duty of every county treasurer, annually, in the month of September, and oftener if required by the Auditor General, to forward to the Auditor General, a statement, under oath or affirmation, of all monies received by him for the use of the commonwealth, since the date of his last statement, distinguishing the amount received from each source of revenue, and embracing the several particulars herein before stated.

Section 40. It shall be the duty of every county treasurer, within ten days after the first day of March, June, September and December, in each year, to pay over to the State Treasurer, the amount of monies received by him for the use of the commonwealth during the preceding quarter, deducting therefrom

such sum or amount as may by law be allowed to him for his compensation.

Section 41. Each county treasurer shall receive in full compensation for his services on behalf of the county, a certain amount per cent. on all monies received and paid by him; which rate shall be settled, from time to time, by the county commissioners, with the approbation of the county auditors.

Section 42. Each county treasurer shall be entitled to deduct from the gross amount of monies received by him for the use of the commonwealth, a commission in the following proportions, viz. where the whole sum accounted for quarterly does not exceed one thousand dollars, at the rate of five per cent.; where it exceeds one thousand dollars, at the rate of five per cent. on the sum of one thousand dollars, and one per cent. on the excess beyond that sum. Provided, that no commission shall be allowed to any county treasurer, unless his accounts shall be transmitted, and the amount due to the commonwealth be paid over, within the time herein before provided.

Section 43. If any county treasurer shall neglect or refuse to perform any of the duties required of him by law, he shall be fined in a sum not exceeding two hundred dollars, and shall be disqualified from holding the office.

Section 44. If any county commissioner or county treasurer shall be concerned in any contract, or shall be directly or indirectly interested in the construction of any public work or improvement, made or undertaken, under the authority of the commissioners of the same county, the same shall be deemed a misdemeanor in office, and such commissioner or treasurer shall be fined in a sum not exceeding five hundred dollars, and shall be adjudged by the court to be removed from office. Provided, that nothing herein contained shall be construed to prevent such commissioner receiving his lawful compensation, while necessarily attending, in his official character, to the progress of any public work or improvement.

### 3. COUNTY AUDITORS.

Section 45. The electors of every county shall, on the day of the general election, in each year, elect one respectable citizen to serve as auditor of the county, for the term of three years next ensuing such election, and until a successor shall be duly elected or appointed.

Section 46. If an election of an auditor shall not take place, as is herein before provided, or if such election shall be set aside according to law, or if any auditor shall decline serving in the office, or shall die or remove out of the county, or be removed from office, the court of Quarter Sessions of the county shall appoint a suitable citizen to fill the vacancy, until the

next general election, when an auditor shall be elected for the unexpired term.

Section 47. Every auditor elected or appointed as aforesaid, shall, before he enters upon the duties of his office, take and subscribe an oath or affirmation, before some person having authority to administer oaths, to support the constitution of the United States and that of this state, and to perform the duties of his office with fidelity; which oath or affirmation, certified by the person before whom it was taken, shall, within ten days thereafter, be filed by such auditor, in the office of the clerk of the court of Quarter Sessions of the proper county.

Section 48. The auditors of each county shall assemble at the seat of justice thereof, on the first Monday of January in each year, and at such other times as they may find necessary for the performance of the duties required of them by law.

Section 49. The auditors of each county, any two of whom, when duly convened, shall be a quorum, shall audit, settle and adjust the accounts of the commissioners, treasurer, and sheriff and coroner of the county, and make report thereof to the court of Common Pleas of such county, together with a statement of the balances due from or to such commissioner, treasurer, sheriff or coroner.

Section 50. It shall also be the duty of the auditors of each county, to audit, settle and adjust the accounts of the commissioners, treasurer, and sheriff and coroner of the county, with the state treasury, and of such other officers in the county, receiving money for the use of the commonwealth, as may be referred to them by the Auditor General; and to make a separate report thereof to the court of Common Pleas for the county, together with a statement of the balances due from or to such commissioners, treasurer, sheriff, coroner, or other officer.

Section 51. The auditors of each county shall have power to issue subpoenas, to obtain the attendance of the officers, whose accounts they are required to adjust, their executors and administrators, and of any persons whom it may be necessary to examine as witnesses, and to compel their attendance by attachment, in like manner, and to the same extent as any court of Common Pleas of this state may or can do in cases depending before them; and also to compel, in like manner, the production of all books, vouchers and papers, relative to such accounts; and such subpoena and attachment shall be served and executed by the sheriff or coroner of the respective county, as the case may require.

Section 52. The auditors of each county shall have power to administer oaths and affirmations, to all persons brought or appearing before them, whether accountants, witnesses, or otherwise; and all persons guilty of swearing or affirming falsely on such examination, shall be liable to the pains and penalties of perjury.



Section 53. If any person, appearing before such auditors for examination, shall refuse to take such oath or affirmation, or, after having been sworn or affirmed, shall refuse to make answer to such questions as shall be put to him by the auditors, touching the public accounts, or the official conduct of such public officers, or any of them, such person so refusing, may be committed by the auditors to the county jail, by warrant under their hands and seals, directed to the sheriff or any constable of the county, setting forth, particularly, the cause of such commitment, until he shall submit to be sworn or affirmed, or to make answers to such questions, or be otherwise legally discharged.

Section 54. Witnesses attending before auditors shall receive, out of the county stock, the same allowance as is received by witnesses attending before the courts of this state; and where final judgment shall be given against any officer, whose accounts shall have been settled by the auditors, the charges of the attendance of such witnesses shall be included in the costs assessed against such officer.

Section 55. If any person, in possession of books, vouchers and papers, relative to public accounts before auditors, shall refuse to produce the same; or, if any officer, whose accounts are to be settled and adjusted by such auditors, shall refuse to attend, or submit to examination, as herein before directed, the auditors shall proceed by the examination of witnesses and other evidence, to ascertain and settle, as near as may be, the amount of public money received by such officer, and its application to public purposes, or otherwise.

Section 56. The report of the auditors shall be filed among the records of the court of Common Pleas of the respective county, and from the time of being so filed, shall have the effect of a judgment against the real estate of the officer, who shall thereby appear to be indebted, either to the commonwealth or to the county.

Section 57. An appeal may be made from such report, to the court of Common Pleas of the same county, either by the commonwealth, the county, or the officer; and, thereupon, the court may direct an issue, as the case may require, to be tried by a jury, upon whose verdict final judgment shall be entered.

Section 58. Provided, That such appeal shall be entered by the commonwealth, within four months, and by the county and officer, within sixty days, after the filing of the report; And, provided also, That if the officer be the appellant, he shall enter into a recognizance with two sufficient sureties, in double the sum found due by such report, with condition to prosecute the appeal with effect, and to pay the costs, and such sum of money, as he shall appear by the verdict of the jury to be indebted.

Section 59. If an appeal shall not be entered, and security given as is herein before required; or, if upon such appeal,

judgment shall be given in favor of the commonwealth, or of the county, execution shall thereupon issue, against the property or person of the defaulting officer, in like manner as upon judgments recovered in the usual course of law.

Section 60. It shall be the duty of the auditors of each county, within ten days, after preparing the same, to transmit to the Auditor General, a certified copy of their report, upon the accounts of the commissioners, treasurer, and sheriff and coroner, of the respective county, with the state treasury, and of such other officers, as may be referred to them as aforesaid.

Section 61. The auditors of each county, shall be allowed, out of the county stock, the sum of one dollar and fifty cents, each, for each day's necessary attendance upon the duties of their office.

Section 62. The amount payable to auditors, for their services, and incidental expenses, and the costs at the attendance of witnesses before them, shall be paid out of the county stock, by an order drawn upon the county treasurer, by the judges of the court of Common Pleas of the same county.

#### 4. SHERIFF AND CORONER.

Section 63. Every sheriff, before he shall be commissioned, or execute any of the duties of his office, shall enter into a recognizance, and become bound in a bond, with at least two sufficient sureties, in the sums and manner hereinafter mentioned.

Section 64. The recognizances and bonds of the several sheriffs of this commonwealth, shall be taken in the following sums, respectively, to wit:

City and county of Philadelphia, sixty thousand dollars.

County of Bucks, fifteen thousand dollars.

County of Chester, twenty thousand dollars.

County of Lancaster, twenty-five thousand dollars.

County of York, fifteen thousand dollars.

County of Berks, twenty thousand dollars.

County of Cumberland, fifteen thousand dollars.

County of Northampton, fifteen thousand dollars.

County of Bedford, eight thousand dollars.

County of Northumberland, fifteen thousand dollars.

County of Westmoreland, ten thousand dollars.

County of Washington, fifteen thousand dollars.

County of Fayette, ten thousand dollars.

County of Franklin, ten thousand dollars.

County of Montgomery, fifteen thousand dollars.

County of Dauphin, fifteen thousand dollars.

County of Luzerne, seven thousand dollars.

County of Huntingdon, fifteen thousand dollars.

County of Allegheny, ten thousand dollars.

County of Mifflin, fifteen thousand dollars.

County of Delaware, eight thousand dollars.  
 County of Lycoming, five thousand dollars.  
 County of Somerset, five thousand dollars.  
 County of Greene, five thousand dollars.  
 County of Wayne, six thousand dollars.  
 County of Adams, eight thousand dollars.  
 County of Centre, five thousand dollars.  
 County of Crawford, five thousand dollars.  
 County of Beaver, five thousand dollars.  
 County of Butler, five thousand dollars.  
 County of Mercer, five thousand dollars.  
 County of Erie, five thousand dollars.  
 County of Warren, five thousand dollars.  
 County of Venango, five thousand dollars.  
 County of Armstrong, five thousand dollars.  
 County of Indiana, five thousand dollars.  
 County of Jefferson, five thousand dollars.  
 County of M'Kean, five thousand dollars.  
 County of Clearfield, five thousand dollars.  
 County of Potter, (when organized,) five thousand dollars.  
 County of Tioga, five thousand dollars.  
 County of Cambria, five thousand dollars.  
 County of Bradford, five thousand dollars.  
 County of Susquehanna, five thousand dollars.  
 County of Schuylkill, twenty thousand dollars.  
 County of Lehigh, fifteen thousand dollars.  
 County of Lebanon, fifteen thousand dollars.  
 County of Columbia, fifteen thousand dollars.  
 County of Union, fifteen thousand dollars.  
 County of Pike, six thousand dollars.  
 County of Perry, fifteen thousand dollars.  
 County of Juniata, fifteen thousand dollars.

And the recognizance and bond of the sheriff of each new county, which shall hereafter be erected and organized, shall be taken in the sum of five thousand dollars, and for every representative of such new county, in the General Assembly, more than one, in the additional sum of four thousand dollars.

Section 65. The form of the recognizance to be taken from the sheriff of each county, and his sureties, shall be as follows, to wit: "You (A. B., C. D. and E. F.) do acknowledge that you owe unto the commonwealth of Pennsylvania, the sum of \_\_\_\_\_, to be levied and made of your several goods and chattels, lands and tenements, upon condition, that if you (A. B.) shall and do, without delay and according to law, well and truly serve and execute all writs and process of the commonwealth of Pennsylvania, to you directed, and shall and do, from time to time, upon request to you for that purpose made, well and truly pay or cause to be paid, to the several suitors and parties interested in the execution of such writs and process, their



lawful attornies, factors, agents, or assigns, all and every sum and sums of money to them respectively belonging, which shall come to your hands, and shall and do from time to time, and at all times, during your continuance in the office of the sheriff of the county of ———, well and faithfully execute and perform all and singular the trusts and duties to the said office lawfully appertaining, then this recognizance to be void, or else to be and remain in full force and virtue.”

Section 66. The form of the bond to be given by the sheriff, and his sureties, shall be as follows, to wit: “Know all men by these presents, that we (A. B., C. D. and E. F.) are held and firmly bound unto the commonwealth of Pennsylvania, in the sum of ——— dollars, to be paid to the said commonwealth for the uses, intents and purposes declared and appointed by law; to which payment, well and truly to be made, we bind ourselves and heirs, executors and administrators, jointly and severally, firmly by these presents.— Sealed with our seals, dated the day of A. D. The condition of the above obligation is such, that if the said A. B. shall and do, without delay, according to law, well and truly serve and execute all writs and process of the said commonwealth to him directed, and shall and do, from time to time, upon the request to him for that purpose made, well and truly pay or cause to be paid, to the several suitors and parties interested in the execution of such writs or process, their lawful attornies, factors, agents or assigns, all and every sum and sums of money to them respectively belonging, which shall come to his hands, and shall and do, from time to time, and at all times, during his continuance in the said office, well and faithfully execute and perform all and every of the trusts and duties to the said office appertaining, then this obligation to be void, or else to be and remain in full force and virtue.”

Section 67. The coroner of each county, before he shall be commissioned, or execute any of the duties of his office, shall enter into a recognizance, and become bound in a bond, with at least two sufficient sureties, in one fourth of the sum, which shall be by law required from the sheriff of the same county.

Section 68. The condition of the recognizance and bond to be given by the coroner shall be, that such coroner will “well and truly perform all and singular the duties to the said office of coroner appertaining;” and such recognizance and bond shall be a security to the commonwealth, and to all persons whomsoever, for the faithful discharge and due performance of all the duties required by law from such coroner.

Section 69. Every such recognizance entered into by a sheriff and coroner, shall be taken by the recorder of deeds of the proper county and recorded in his office; and, when so recorded, shall be by him transmitted to the Secretary of the Common-

wealth, with a certificate endorsed by such recorder, of its having been duly recorded.

Section 70. Before any such bond or recognizance shall be taken by the recorder of deeds, the sufficiency of the sureties therein named, shall be submitted to, and approved of, by the judges of the court of Common Pleas of the proper county, or by any two of them, for that purpose convened, who shall certify their approbation of such sureties to the recorder; and no commission shall afterwards be granted, until the Governor shall have also approved of the sufficiency of such sureties.

Section 71. Provided, That no judge, clerk or prothonotary of any court, or attorney at law, shall be permitted to become a surety in such bond or recognizance; and that no person shall be received as surety for a sheriff, and for a coroner, at the same time.

Section 72. Copies of the record of any such bond or recognizance acknowledged and recorded as aforesaid, and duly certified by the recorder of deeds for the time being, shall be good evidence, in any action brought against the obligors or cognizors, according to its form and effect, in the same manner as the original would be, if produced and offered in evidence.

Section 73. It shall be the duty of every sheriff, and of every coroner, immediately after receiving his commission from the Governor, to deliver the same to the recorder of deeds of the county, by whom the same shall be recorded at the expense of such sheriff or coroner.

Section 74. No person elected or appointed to the office of sheriff or coroner, shall presume to execute any of the duties of such office, before a commission shall have been duly granted to him and left for record as herein before provided, under penalty of imprisonment for a term not exceeding six months, at the discretion of the court of Quarter Sessions of the county. Provided, that such person and his sureties in any bond or recognizance, given by him for the due discharge of the duties of the office, shall, nevertheless, be liable to any person injured, by any acts done by him under color of such office.

Section 75. All the real estate, within the same county, of a sheriff and coroner, and their respective sureties, shall be bound by a recognizance, taken in manner aforesaid, as effectually as by a judgment to the same amount in any court of record of such county; and it shall be the duty of every recorder of deeds, so soon as a sheriff or coroner shall be commissioned, to certify the recognizance taken by him to the prothonotary of the court of Common Pleas of the same county, who shall enter the names of the parties thereto upon his docket, in like manner as judgments are by law directed to be entered.

Section 76. If any sheriff shall be legally removed from his office, or shall die before the expiration of the term for which he shall have been commissioned, the coroner of the same



county shall execute the office of sheriff, and perform all things thereunto appertaining, until another sheriff shall be duly commissioned, and notice thereof given to such coroner.

Section 77. Whenever a vacancy shall happen in the office of sheriff or coroner, which is to be filled by a new appointment, in the manner prescribed by the constitution of this commonwealth, the person so to be appointed, shall enter into a recognizance, and give bond with sureties, to be approved in manner aforesaid, in such sum as shall be determined by the judges of the court of Common Pleas of the same county, or by any two of them, for that purpose convened.

Section 78. It shall be the duty of every sheriff, annually, on the first Monday in November, and oftener if required by the Auditor General, to render to the Auditor General an account, under oath or affirmation, of all monies received by him for the use of the commonwealth, during the preceding year, or since the last preceding settlement, and pay over the same, within ten days after rendering such account, to the State Treasurer, deducting therefrom a commission at the rate of two and a half per cent. on the amount so received.

Section 79. It shall be the duty of every sheriff, and of every coroner acting as sheriff, to provide and keep in his office a proper book or books, in which he shall enter all writs that may come to his hands, and the proceedings thereon; and at the expiration of his term of office, such books shall be deposited in the office of the prothonotary of the court of Common Pleas of the same county, for the inspection of all persons interested therein.

Section 80. It shall be the duty of every sheriff, his deputy or agent, and of every coroner acting as sheriff, whether a demand for that purpose shall be made or not, immediately after receiving any of his fees, or any written security therefor, to deliver a bill of particulars, specifying the several items contained therein, and the amount thereof, and to give the party paying such fees a receipt in full therefor, or to indorse on such written security, when taken, that the same was given for fees, and to sign the indorsement so to be made; and if any sheriff, his deputy or agent, or coroner acting as aforesaid, shall refuse or neglect to give such bill of particulars or receipt, or to make such indorsement, he shall forfeit and pay any sum not exceeding fifty dollars, to the party injured, who is hereby declared to be a competent witness to prove such refusal or neglect.

Section 81. It shall be the duty of every sheriff to place and keep up in some conspicuous part of his office the eightieth section of this act, for the inspection of all persons having business in such office, on pain of forfeiting for each day that the same shall be missing, through his neglect, the sum of ten dollars; one-half of which penalty shall be for the use of the informer, and the other half for the use of the proper county.



### III. OF TOWNSHIP OFFICERS.

Section 82. It shall be lawful for the electors of every township, annually, to elect the following township officers, to wit:

1. An assessor.
2. Two supervisors.
3. Two overseers of the poor.
4. A township treasurer.

5. A town clerk, who shall serve in the respective office for the term of one year, and until a successor shall be duly elected or appointed.

6. A township auditor to serve for the term of three years.

7. Two persons, whose names shall be returned to the court of Quarter Sessions of the proper county, for the office of constable, as is herein after provided.

And in the year 1834, and every third year thereafter, it shall be lawful for the electors of every township to elect two assistant assessors for the term of one year.

Section 83. The election for assessors shall be held on the day, and at the place, appointed by law for the choice of inspectors of the general election. The election for all other township officers shall be held at such place, on the Friday preceding the third Saturday in the month of March, in each year.

Section 84. If the electors of any township shall fail to choose any township officer, other than assessor, assistant assessors, or constable, or if any person elected to such office shall neglect or refuse to serve therein, or if any vacancy shall happen in such office by death or otherwise, it shall be lawful for the court of Quarter Sessions of the proper county, to appoint a suitable person to fill such office until the next annual election. Provided, that in the case of township treasurer or town clerk, no such appointment shall be made except on the application, in writing, of at least thirty electors of the township.

Section 85. No person shall be eligible to any township office, unless he be an elector of the township for which he shall be chosen.

Section 86. If any person elected or appointed to any township office, excepting that of constable, and duly notified thereof, shall neglect or refuse to serve in such office, he shall forfeit and pay the sum of forty dollars. Provided, that no person shall be required to serve in any such office oftener than once in ten years.

Section 87. Every person elected or appointed to any township office, shall, before entering upon the duties of his office, take and subscribe an oath or affirmation, before some person having authority to administer oaths, to support the constitution of the United States, and that of this commonwealth, and to perform the duties of his office with fidelity; a copy of which

oath or affirmation, certified by the person by whom the same shall be administered, shall, within ten days thereafter, be filed with the town clerk, if there be one, in such township.

## 1. ASSESSORS.

Section 88. If the electors of any township shall fail to choose an assessor or assistant assessor, at the time appointed by law, or if any person elected to such office shall neglect or refuse to serve therein, or if any vacancy shall happen therein by death or otherwise, the commissioners of the county shall appoint a fit person to fill the office, who shall have the same powers, be subject to the same penalties, and receive the same compensation, as if he had been elected in manner aforesaid.

Section 89. It shall be the duty of each assessor and assistant assessor, to produce to the commissioners of the county, within twenty days after his election or appointment, a copy of the oath or affirmation, taken and subscribed by him as is herein before directed, and attested by the person by whom the same was administered, which shall be filed by the commissioners in their office.

Section 90. It shall be the duty of each assessor and assistant assessor, to keep an account of the several days by him actually employed in the performance of his duties, and to make return of the same to the commissioners of the county, verified by his oath or affirmation; and for each day so necessarily employed, he shall receive the sum of one dollar.

## 2. SUPERVISORS.

Section 91. It shall be the duty of the supervisors of each township, to keep fair and clear accounts, in a book to be provided for the purpose, of all monies received by them, or either of them, and of all monies by them, or either of them, expended on behalf of the township; and such accounts, verified by oath or affirmation, shall be exhibited to the township auditors at the annual settlement of the accounts of such supervisors.

Section 92. If any supervisor shall neglect or refuse to produce his accounts before the auditor, or shall neglect or refuse forthwith to pay over to his successor in office, any balance of public money in his hands, or to deliver to such successor, the books of account as aforesaid, it shall be lawful for the auditors, by warrant under their hands and seals, directed to the sheriff or any constable of the county, setting forth particularly the cause of such commitment, to commit such delinquent to the county jail until he shall comply with the requisitions of the law, or be otherwise legally discharged.

Section 93. If any supervisor shall neglect or refuse to perform any duty required of him by law, he shall forfeit and pay



a sum not less than four dollars, nor exceeding fifty dollars, to be recovered in a summary way before any justice of the peace of the county, and applied towards repairing the highways of the same township. Provided, that such supervisor may appeal from the judgment of such justice to the next court of Quarter Sessions, who shall take such order thereon as to them shall appear just and reasonable, and the same shall be final and conclusive.

Section 94. Each supervisor shall be allowed, in the settlement of his accounts, the sum of one dollar for each day he shall be necessarily employed in discharging the duties of his office.

### 3. OVERSEERS OF THE POOR.

Section 95. The overseers of the poor of every township shall have capacity as a body corporate,

1. To sue and be sued as such.

2. To take and hold real estate within the limits of the township, and also personal property, for the benefit of the poor of the township, and for no other use or purpose.

Section 96. If any overseer shall remove out of the township, he shall previously thereto deliver over to some other overseer of the same township, all books of account, documents and other papers, and all monies and effects in his possession in right of his office; and upon the death of any overseer, it shall be the duty of his executors or administrators, within forty days after his decease, to deliver over all such books, documents, papers and effects to some other overseer as aforesaid, and to pay out of the assets in his hands, all such monies, before paying any of the debts of the decedent.

### 4. TOWNSHIP TREASURER.

Section 97. Each township treasurer shall give bond with sureties, to the satisfaction of the supervisors and overseers of the same township, conditioned for the faithful performance of the duties of his office, for a just account of all monies that may come into his hands by virtue thereof, for the delivery to his successor in office of all books, papers, documents, and other things held in right of his office, and for the payment to him of any balance of money belonging to the township that may remain in his hands.

Section 98. It shall be the duty of every township treasurer to receive all monies due or accruing to the township, and to keep distinct accounts of all sums received from the road tax, the poor tax, and other sources; which accounts shall at all times be open to the inspection of the supervisors and overseers of the poor of the township, and of each of them. He shall pay all monies received by him, from taxes or otherwise for the use of



the poor, on orders drawn by the overseers of the poor; and all other monies on orders drawn by the supervisors of the township. And he shall annually, in the month of March, state his accounts, and lay the same, together with the vouchers, before the township auditors for settlement according to law.

Section 99. Each township treasurer shall receive in full compensation for his services, a certain amount per cent. on all monies received and paid by him; which rate shall be settled, from time to time, by the supervisors and overseers of the poor of the township, with the approbation of the township auditors.

Section 100. If any township treasurer shall neglect or refuse to perform any of the duties of his office, he shall be fined in a sum not exceeding one hundred dollars, and shall be disqualified from holding the office.

## 5. TOWN CLERK.

Section 101. The town clerk in each township shall, *ex-officio*, be clerk to the supervisors and overseers of the poor of the same township; and, as such, shall keep a record of the proceedings of the said officers, and shall receive such compensation therefor as they shall determine.

Section 102. It shall be the duty of each town clerk, whenever necessary, to provide a suitable book or books, for the purpose of entering therein all matters of which he shall by law be required to keep a record, the expense of which books shall be paid by the township treasurer out of the township funds.

Section 103. The book or books so to be provided by the town clerk, shall be kept at the place appointed for holding the township elections, or as near thereto as conveniently may be, and shall be open to the inspection of any person who may have occasion to search therein, and for each search he shall be entitled to a fee of ten cents.

## 6. TOWNSHIP AUDITORS.

Section 104. The auditors of each township, any two of whom duly convened, shall be a quorum, shall audit, settle, and adjust the accounts of the supervisors, overseers of the poor, and treasurer of the township, and of such other township officers as may by law be referred to them.

Section 105. The report of such township auditors shall be filed with the town clerk, if there be one; and if there be no town clerk, it shall remain with the senior auditor, for the inspection of all persons concerned.

Section 106. It shall be lawful for the township, or the officer accounting, to appeal from such settlement to the court of Common Pleas of the same county, within thirty days after such settlement; whereupon the court may direct an issue to deter-

mine disputed facts, if necessary. Provided, that no appeal by such officer shall be received, unless the appellant shall enter into a recognizance with two sufficient sureties, conditioned to prosecute the appeal with effect, and to pay all costs accruing thereupon.

Section 107. The auditors of each township shall have the same power and authority to obtain the attendance before them of parties and witnesses, and the production of books and papers, and to administer oaths and affirmations, as are by law given to county auditors.

Section 108. The auditors of every township shall respectively receive the sum of one dollar for each day necessarily employed in the duties of their office, which shall be paid by the township treasurer out of the township funds.

## 7. CONSTABLE.

Section 109. It shall be the duty of every person elected to the office of constable, in any township, to appear on the first day of the next court of Quarter Sessions of the same county, to accept or decline such office; and if any person so elected, and duly notified thereof, shall neglect or refuse so to appear, he shall forfeit to the commonwealth the sum of thirty dollars, to be levied by order of the court.

Section 110. The court to which a return, as aforesaid, shall be made, shall appoint one of the persons returned to be constable of the township, for the term of one year from the date of his appointment, and until a successor shall be duly appointed, if it shall appear to the satisfaction of the court that he possesses a freehold estate in his own right, clear of all incumbrances, of the value of at least one thousand dollars; or, if he does not possess such freehold estate, if he shall give bond with at least one sufficient surety, to be approved of by the court, in the sum and manner hereinafter directed. Provided, that the court shall in all cases give a preference, in such appointment, to the person highest on the return, if he be a freeholder, as aforesaid, or offers to give security, as herein before provided.

Section 111. If the electors of any township shall fail to elect two persons for the said office, or if both the persons returned should be incompetent with respect to estate, or unable to give the requisite security, or should refuse to take upon themselves the said office, or in the event of vacancy in the office by death or otherwise, it shall be the duty of the said court to appoint some other respectable person, possessing a freehold estate of the value aforesaid, or who shall give the security required, to serve as constable until the next annual election, and until a successor be duly appointed.

Section 112. If any person, who shall be duly elected and appointed a constable, or who shall be appointed as such by the

court, in the cases herein before mentioned, and who shall possess a freehold estate of the value aforesaid, shall refuse or neglect to take upon himself the said office, or shall not procure a deputy to undertake the duties thereof, he shall be fined by the court in the sum of forty dollars.

Section 113. Provided, that no person shall be liable to the penalty aforesaid, who shall have served personally, or by deputy, in the office of constable of the same township, within ten years of his said election or appointment; or, having been elected or appointed within that period, shall have paid the penalty aforesaid.

Section 114. The bond to be given by a constable shall be in such sum, not less than five hundred dollars, nor more than three thousand dollars, as the court shall direct, and shall be taken by the clerk of the court in the name of the commonwealth, with condition for the just and faithful discharge by the said constable of the duties of his office: And such bond shall be held in trust for the use and benefit of all persons who may sustain injury from him, in his official capacity, by reason of neglect of duty, and for like purposes and uses, as sheriffs bonds are given and held.

Section 115. No deputy shall be appointed by any constable, either by general or partial deputation, without the approbation of the court of Quarter Sessions of the proper county first had and obtained, except the same be made specially in some civil suit or proceeding, at the request and risk of the plaintiff.

Section 116. Provided, that in the event of the death, inability, or refusal to act, of his deputy, the constable of any township may, with the approbation of any one of the judges of the court of Quarter Sessions of the same county, appoint another deputy, with full authority to act as such until the next regular session of such court; and for the acts of such deputy, the constable and his sureties shall be liable as in other cases, and in every such case the constable shall file a written copy of such deputation in the office of the clerk of the court of Quarter Sessions of such county.

Section 117. In every case in which any pecuniary penalty or forfeiture is imposed by this act, the proceeding for the recovery of the same shall be by indictment or information in the court of Quarter Sessions of the proper county, unless it be otherwise specially provided.

Section 118. Nothing in this act contained shall be so construed as to repeal any special provision heretofore made by law for any city, borough, district or township in this commonwealth.



## Remarks

### Upon the bill relating to Weights and Measures, and to Admeasurement.

The regulation of weights and measures is a matter of much importance, not less so than the regulation of coin. It is to be regretted that these subjects should have been separated in the legislation of Congress. We find, however, that very soon after the adoption of the constitution of the United States, several laws were enacted relative to the coining of money and its value, while upon the subject of weights and measures, no definitive action has yet been had.

In the absence of national legislation many of the states have exercised the power of legislating on this subject. By a recent act of Assembly of this state (11th April, 1825, § 11.) commissioners were appointed to examine into the state and condition of the standards in use in this commonwealth, but they did not undertake the trust. As we supposed the section of the act mentioned to be expressive of the views of the legislature in relation to the subject, we have made it our guide in the preparation of the accompanying bill. We proceed to make a few observations explanatory of the sections.

Section 1. The act of 1700 relates to county standards. The object of this section is to provide state standards from which county standards may be copied, and by which they may be regulated. The provision is new, but necessary to ensure the uniformity of the county standards.

Section 2. This section is subsidiary to the first; it is designed to preserve the original value of the state standards. The frequency of trial and the modes of trial are left to the discretion of the Governor. Scientific considerations suggest the propriety of abstaining from particular injunctions in the last of these particulars. The Governor will doubtless preserve data for the application of the most approved tests.

Section 3. This section, which is a proviso to the second, is framed with a view to the possible future action of Congress upon the subject. The effect of it will be to secure the adjustment of the standards of this state to the national system as that shall become fixed.

Section 4. Provides for the standard yard. We have not thought it necessary to refer to any other standard for determining its length. In the nature of things the root or primary unit of a system of metrology must be assumed. The word "yard" is understood to mean a certain length which custom has pretty definitely ascertained.

The Governor will doubtless have recourse to all means necessary to settle its just value with the utmost exactness attainable. Having done so, the principal object of the section will be gained by embodying its meaning or value in a fixed and palpable form. The yard thus ascertained is made the unit of all measures of length.

Sections 5 & 6, Provide that all measures of length less than the yard, shall be engraved upon the yard, and (section 6 contains in general terms) that the multiplies and fractions of all measures shall be taken in parts of the standard unit.

Section 7, Provides for the standard wine gallon and beer gallon. It is only necessary to say that the dimensions stated, correspond with those of the measures used at the custom house in Philadelphia. Adams' Rep. Table, (a. 2.) Both kinds of measures are recognized in the acts of Assembly—See acts 1705, 22d May, 1722, §4, 12th May, 1789, §3, §4.

Section 8. The standard measure of the bushel prescribed by this section, is that commonly denominated the Winchester bushel.

Section 9, Is subsidiary to the three preceding sections. The phraseology is general and is applicable to every variety of smaller measures in use.

Section 10. This section provides for a different form of the bushel to be used for measuring lime. It is derived from the act of 23d March, 1819, §1—enacted for the counties of Bucks, Montgomery, Delaware, Chester, Lancaster and York, and by this section proposed to be made general. But the remainder of this act (of 1819) is not introduced, and it will of course remain in force in the counties for which it was enacted. We have some reason to believe that this form of the bushel is used in other counties besides those above mentioned. The act of 2d April, 1822, §3, which is a general law, provides a fee for regulating the lime bushel.

Sections 11 & 12, Relate to weights. It is usual to deduce the unity of weight, from the gravity of water taken in parts of the standard inch: But Congress having established a troy pound, (act 19th May, 1828) we have adopted it as the unit of weight. The pound thus established, is the troy pound of the English metrology, to which the avoirdupois pound bears the proportion expressed in this (eleventh) section, or very nearly. The twelfth section provides, merely, that small weights shall be proportionate.

Section 13. This section, and the six following, relate to county standards, and the duty of the inspection and regulation of weights. It may be proper to add a remark upon the method proposed for the compensation of the inspectors and regulators. Fees do not seem to us a proper method of compensation. The duties of many officers, those connected with the courts for example, are susceptible of enumeration, and are sufficiently uni-

form to admit of a scale, and to these a fee bill is conveniently applicable. But of a regulator of weights, &c. the principal thing required is mechanical labor, varying perhaps in every case: this should be paid for according to its value. Of such general importance is the regulation of weights and measures, that it would not be very unequal were it to be made entirely a charge upon the public. We propose, however, to make it a charge upon the public, only, in the first instance, with power to require, through the agency of their officers, a remuneration from individuals in proportion to the labor bestowed in each case.

Section 20. This section relates to gauging instruments. In England, by a recent act of Parliament, the capacity of the gallon is altered from the Winchester measure: An alteration of the gallon has also recently been made in the state of New York. We refer to these instances of legislation, merely to suggest a case for the application of the provisions of this section.

Section 21 This section is designed to prevent the sale of inaccurate weights and measures of all descriptions. We believe the effect of it will be, to make the regulation and adjustment of weights, &c. to the standards, a part of the manufacture. Such it ought to be.

Sections 22 & 23, Provide penalties for the use of false weights and measures. When there is intent to defraud, the act is treated as criminal; this is the common law, (3 Burr. 1697, Com. Dig. Indictment D.) But it is necessary to guard against the inadvertant use of false weights and measures. This also, is herein provided for. But the section does not *require* any person to have his weights, &c. regulated. It enacts, only, that if not regulated annually, the owner shall use them at his own risk. We think this method preferable to that of requiring an annual inspection of weights and measures.

The remaining sections of the bill relate properly to admeasurement, and certain terms of admeasurement.

Section 24, Defines the acre: we have introduced it into this bill, merely because we found an English statute upon the subject, reported to be in force by the judges of the Supreme Court, (31 Ed. 1 St. 6) Were there no such statute, we should not think the section at all necessary.

Section 25, Is taken from a local act; 10th March, 1817, §2. It provides for the dimensions of a cord, and for the manner of cording.

Section 26, Is taken from the act of 16th January, 1823. This act does not specify the kind of gallon: we suppose the wine gallon was intended, and have therefore added the words, in wine measure.

Sections 27 & 28. These sections are taken from the act of 10th March, 1818, § 1, § 2, without any alteration in substance.



Section 29. This section is taken from a local act passed 2d April 1822, §1. We have introduced it, because there seems to be a propriety in having but one rule for the sale of the same article throughout the commonwealth.

Sections 30 & 31. These sections require no particular remark in this place. In respect to the proviso contained in the thirty-first section, we take leave to refer to some remarks made upon the 118th section of the bill relating to counties, &c.

## **A Bill**

### **Relating to Weights and Measures, and to Admeasurement.**

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## An Act

### Relating to Weights and Measures, and to Admeasurement.

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*It is enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, as follows:*

Section 1. It shall be the duty of the Governor to procure, for the use of the commonwealth, metallic standards for weights and measures, according to the denominations of weights and measures which have been hitherto used and approved in this commonwealth; which standards shall be inclosed in suitable cases, and be deposited and carefully preserved in the office of the State Treasurer.

Section 2. It shall also be the duty of the Governor, from time to time as he shall judge expedient, to cause the said standards to be examined and tried; and, if necessary, to be corrected or renewed, so that they shall at all times be of their original measure or weight, and proportions.

Section 3. Provided nevertheless, that if the Congress of the United States shall hereafter establish a standard for any of the denominations of weights or measures, it shall be the duty of the Governor to cause the standard of this commonwealth for the same denomination to be made equal in all respects, and to be at all times conformable thereto.

Section 4. The standard yard, which shall be procured by the Governor, shall be taken as the unit of all measures of length, and one-third part of the said standard yard shall be a foot, and one-twelfth part of such foot shall be an inch.

Section 5. The yard aforesaid shall be graduated or divided by marks engraved thereon, so that it shall exhibit distinctly the following measures, to wit:

The length or rectilinear extension of the foot and of the inch aforesaid, and all the customary divisions or aliquot parts of a foot.

Also, the length or rectilinear extension of one-half of a yard, one-quarter of a yard, one-eighth of a yard, one-sixteenth of a yard, and of all other customary divisions or aliquot parts of a yard.

Section 6. All measures of extension, whether binary, ternary,

ry, decimal, duodecimal, or other aliquot parts, divisions or fractions of a yard, foot, or inch, or any multiple or combination thereof, expressed or known by any customary measure, or by any of the terms of admeasurement of extension, quantity, capacity, or other dimension, shall respectively be equal to the same parts, proportion or multiple of the standard yard, foot or inch aforesaid, and not otherwise.

Section 7. The standard measure of the wine gallon shall contain two hundred and thirty-one cubical inches of the standard inch aforesaid, and no more. And the standard measure of the beer gallon shall contain two hundred and eighty-two cubical inches as aforesaid, and no more.

Section 8. The standard measure of the bushel shall contain two thousand one hundred and fifty cubical inches and forty-two hundredths of a cubical inch of the standard inch aforesaid, and no more.

Section 9. The measures of any aliquot or fractional part of the wine gallon, beer gallon and bushel aforesaid, shall be proportionate thereto respectively, in the ratio of such aliquot or fractional part.

Section 10. The bushel to be used for measuring lime, shall be made in the form and of the dimensions, to wit:

Thirteen inches and a half diameter at the bottom in the clear:

Fifteen inches diameter at the top in the clear:

Thirteen inches and forty-seven hundredths of an inch perpendicular depth in the clear.

Section 11. The denomination of weights shall be computed upon the troy pound of the mint of the United States, in the manner following, to wit:

The troy pound of this commonwealth shall be equal to the troy pound of the mint aforesaid:

The pound avoirdupois of this commonwealth shall be greater than the troy pound aforesaid in the proportion of seven thousand to five thousand seven hundred and sixty.

Section 12. The weights of any aliquot or fractional part of the troy pound and avoirdupois pound aforesaid, shall be proportionate thereto respectively, in the ratio of such aliquot or fractional part.

Section 13. It shall also be the duty of the Governor to procure to be made, for each of the counties of this commonwealth, at the charge of the counties respectively, a set of standards, for weights and measures, according to the several denominations hitherto adopted into use in this commonwealth, which standards shall be accurately adjusted to the standards aforesaid; and thereupon he shall cause the same to be properly sealed or stamped, and to be delivered to the commissioners of the counties respectively, to be used as standards for the adjusting of weights and measures, and for no other purpose.

Section 14. It shall be the duty of the commissioners of the

respective counties, at least once in every ten years, and oftener if they have reason to believe it necessary, to cause the standards of the respective county to be examined and tried, and if necessary, to be corrected or renewed according to the standards aforesaid of the commonwealth, so that they shall be equal and in all respects conform and correspond thereto.

Section 15. The duty of the inspection and regulation of weights and measures shall, in the several counties of this commonwealth, (except in the city and county of Philadelphia,) be performed by such competent person or persons as the commissioners of the respective counties shall, with the approbation of the court of Quarter Sessions of such county, designate.

Section 16. Every person charged with the inspection and regulation of weights and measures as aforesaid, shall, before he enters upon the duties of his office, make oath or affirmation to perform the same with fidelity.

Section 17. The persons who may be charged with the inspection and regulation of weights or measures as aforesaid, shall not be entitled to demand or receive any fee whatsoever for their services in that behalf; but they shall be paid for the same out of the county stock, according to contract with the commissioners of the respective county. They shall demand and receive for the use of the county, for every weight and measure regulated by them, such sum as the mechanical labor employed in the regulation and sealing thereof shall be reasonably worth, and no more.

Section 18. All weights and measures, and all beams, scales and steel-yards, which shall be adjusted to the standards of the respective counties as aforesaid by the officer charged with the duty of the inspection and regulation thereof, shall be authenticated or stamped by him with some sufficient brand or seal.

Section 19. If any person charged with the duty of the inspection and regulation of weights and measures shall unnecessarily, carelessly or through want of skill, mar or injure any scale, beam, steel-yard, weight or measure while in his hands or possession for the purposes of his office,—the same being just and true or susceptible of easy adjustment to the proper standard—he shall furnish forthwith to the owner thereof a correct scale, beam, steel-yard, weight or measure of the same kind and of equal value, or in default thereof, shall pay to such owner twice its value.

Section 20. All gauging instruments used within this commonwealth shall be constructed so as to show the contents or ullage of any vessel or cask, according to the measures aforesaid. And if any person shall use any such instruments of any other construction or proportion, such person shall, before marking the contents of any cask or the ullage thereof, as shown by such instrument, reduce the same to the standard measures



aforesaid, under penalty of ten dollars for every neglect, for the use of any person who may be aggrieved thereby.

Section 21. All weights and measures sold within this commonwealth, shall be deemed to have been warranted by the seller to correspond (according to the respective denomination) with the standards aforesaid.

Section 22. Every person who shall sell or buy any article of merchandize or traffic, or any thing whatsoever, by any false yard, beam, scale, weight, or measure, to the injury of another, the person selling or buying as aforesaid, being the owner of such yard, beam, scale, weight or measure, and not having had the same duly regulated and approved by a lawful standard within one year, shall forfeit thrice the value of the article so sold or bought, one half to the use of the county, and the other half to the use of the person aggrieved, to be recovered in one action founded on this act. Provided, that in no case shall the penalty aforesaid be less than three dollars.

Section 23. And if any person shall sell or buy any article of merchandize or traffic, or any thing whatsoever, by any false yard, beam, scale, weight or measure, knowing the same to be false and intending thereby to deceive or defraud, such person shall be liable to indictment and punishment as in cases of misdemeanor.

Section 24. An acre of land shall contain four thousand eight hundred and forty horizontal square yards of the standard yard aforesaid, or a surface which shall be equivalent thereto. Provided, that nothing in this section shall be deemed or taken to affect the allowance of any surplus quantity to which any person may be otherwise entitled, by virtue of any record, patent, deed, or other instrument or contract.

Section 25. The standard dimensions of a cord of bark or of wood for fuel, shall be eight feet in length, including one-half of the kerf, four feet in breadth and four feet in height, containing one hundred and twenty-eight feet of the standard foot aforesaid, in solid measure, well stowed and packed. And if any part of the wood be crooked, it shall be placed at the top of the cord or load, and a reasonable and fair allowance shall be made by all corders and venders of wood for the deficiency which may be occasioned by such crooked or uneven wood.

Section 26. A hogshead of cider shall be deemed and taken to be one hundred and ten gallons thereof in wine measure, in all cases where there shall be no special agreement to the contrary.

Section 27. The several kinds of grain hereinafter mentioned, may be estimated and sold by weight avoirdupois, as follows, to wit: Sixty pounds of wheat, fifty-eight pounds of rye, fifty-eight pounds of corn, forty-eight pounds of buckwheat, forty-seven pounds of barley, thirty-two pounds of oats, shall be deemed and taken to be equal each to a bushel as aforesaid, of

the said kinds of grain respectively. Provided, nevertheless, that the said kinds of grain may be bought or sold by measure, as heretofore.

Section 28. The several kinds of foreign salt herein after mentioned may be estimated and sold by weight avoirdupois, as follows, to wit: Eighty-five pounds of coarse salt, seventy pounds of ground salt, sixty-two pounds of fine salt, shall be deemed and taken to be equal each to a bushel as aforesaid, of the said kinds of salt respectively. Provided, that the said kinds of salt may be bought or sold by measure, as heretofore.

Section 29. Anthracite coal may be sold by weight avoirdupois, or by bushel measure, as follows, to wit: Every bushel of coal shall contain eighty pounds thereof, every hundred weight shall be deemed and taken to be one hundred and twelve pounds thereof, twenty-eight bushels, or two thousand two hundred and forty pounds thereof, shall be deemed and taken for one ton.

Section 30. All pecuniary penalties and forfeitures imposed by this act, shall be recoverable in like manner as debts of equal amount may be recovered.

Section 31. Provided that nothing in this act shall be so construed as to interfere with any special provision, heretofore made by law, respecting the powers, duties or emoluments of the regulator of weights and measures, or of the sealer of dry measures for the city and county of Philadelphia.

